Court No. 2

In the High Court of Uttaranchal at Nainital.

First Appeal From Order No. 162 of 2001.

Oriental Insurance Company Ltd.,
through its Divisional Manager
Divisional Office ,Haldwani,
District-Nainital..

.....Opp.party/Appellant

Versus

(1) Smt.Sheela Devi W/o late Sri Panna Lal Sharma,
R/o village-Nagla Dan Sahai, Tehsil-Kot,
District-Aligarh,
at present C/o Sri Balbir Singh Negi,
Sarswati Vihar Colony, New Yamuna Colony,
Dak Pathar, Dehradun.
AND seven others.

..... Claimant/Respondents.

(9) Sri Devendra Kumar Bhagar
S/o Sri Fakir Chand,
R/o Dehradun,
(10) M/s New Chem Industries,
37 Subhash Road, Dehradun through
Sri Neeraj Gupta, Managing Director.

..... Opp.party /Respondents

Dated: 21st Aug.,2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been filed by the Oriental Insurance Company against the award dated 07.2.2001 passed by the Motor Accident Claims Tribunal/I Additional District Judge, Dehradun *(hereinafter referred to as the Act)* in Motor Accident Claim Case nos. 6 of 1997.

2- Brief facts giving rise to this appeal are that on 11.12.1996 at about 9.45 p.m. driver Yakub Ali was plying the vehicle No. HP 17-3247 rashly and negligently when he was going from Dehradun to Paonta, in which deceased

Panna Lal Sharma was traveling. When the said vehicle reached near Milk Parag Dairy Herbertpur, Dehradun, vehicle No. No.URM 4065 which was coming from opposite direction and being driven by its driver Ranvir Singh rashly and negligently hit the vehicle No. HP 17-3247 on its driver side. In the said accident Panna Lal Sharma sustained grievous injuries and died in the Hospital, information of which was given by the Police to the petitioners/claimants on the next day i.e. 12.12.1996. The deceased was aged about 38 years at the time of accident and he was posted as Assistant Soil Conservation Inspector in Soil Conservation Department (Agriculture Department), Vikas Nagar, Dehradun. He was getting monthly salary of Rs. 3409/-.

The learned Tribunal after deciding the issues framed on the pleadings of the parties, allowed the claim petition for grant of Rs. 4,19,140/- alongwith interest at the rate of 9% per annum from the date of application till the date of payment against the Opp.party No.3- Oriental Insurance Company. Feeling aggrieved, the Insurance Company has come up in this appeal.

Undisputedly, the offending vehicle was a goods-carrier and the main ground taken in this appeal is that in a goods-carrier vehicle passenger was not allowed to travel. The deceased was unauthorized passenger and he was not covered under the insurance policy. Only the driver and employee or the owner was entitled to compensation. The deceased was gratuitous passenger; therefore no compensation could be paid.

3- The learned counsel for the appellant relied on the Apex Court's judgment in the matter of *National Insurance Company Ltd. Vs. Baljit Kaur and others; (2004) 2 S.C.C. page 1,* to submit that the Tribunal did not record

any findings as to whether the deceased was covered under the insurance policy and whether any premium was paid or not. He submitted that since clause (b) (i) was inserted to section 147 of the Motor Vehicles Act, in 1994, therefore insurance made after 1994, owners of the goods are insured by the insurance company. Since the policy under which liability of payment of compensation was to be determined has covered the owners of goods, therefore the tribunal fell into error in fastening the liability on the insurance company.

4. The Apex Court in the case of *National Insurance Company Vs. Baljit Kaur (supra)* was dealing with the payment of compensation to the gratuitous passengers. The Tribunal while deciding issue No.2 recorded a finding that it is proved from the evidence of P.W.1 & P.W.3 that deceased Panna Lal was traveling in the offending truck and he was not the relative of driver and conductor of the offending truck. However, the tribunal has not recorded any finding as to whether the deceased was covered under the insurance policy or not and the liability of the insurer or the insured.

5. The Apex Court in the case of *National Insurance Co.Ltd. Vs. Baljit Kaur (supra)* in para-21 directed the insurance company to satisfy the award amount in favour of the claimant if already not satisfied and receive the same from the owner of the vehicle. Para-21 of the aforesaid judgment is reproduced as under:-

> *"The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High*

Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

6- In the aforesaid case (supra) the Hon'ble Supreme Court under Article 142 of the Constitution of India, to meet the ends of justice, directed the Insurance Company to satisfy the award. Therefore, in the same terms we direct that the Insurance Company shall satisfy the award and shall recover the amount of the same from the insured/owner if the liability of the insured/owner is fixed by the executing court i.e. Motor Accident Claims Tribunal.

7- For the aforesaid reasons, the appeal is disposed of accordingly subject to the directions aforementioned. The amount of compensation, if deposited here, shall be transmitted to the concerned Motor Accident Claims Tribunal.

(B.S.Verma, J.) **(P.C.Verma, J.)**

P.Singh